

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 22-CVS003672-310

LELAND STANFORD DAVIS, *on*)
behalf of himself and all others similarly)
situated,)

Plaintiff,)

FILED)

v.)

MRO CORPORATION,)

Defendant.)

DATE: June 14, 2024)
TIME: 10:33:54AM)
DURHAM COUNTY)
CLERK OF SUPERIOR COURT)
BY: McQueen, George)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION**

**SETTLEMENT, DIRECTING NOTICE
TO THE CLASS, AND SCHEDULING
FAIRNESS HEARING**

WHEREAS Plaintiff Leland Davis (“Plaintiff”), individually and on behalf of all others similarly situated, has reached a settlement (the “Settlement”) with Defendant MRO Corporation (“Defendant”).

The Settlement Agreement sets forth terms and conditions of a proposed class action settlement; and,

Pursuant to North Carolina Rule of Civil Procedure 23, Plaintiff has moved for an order seeking preliminary approval of the proposed Class Action Settlement; certification of the Settlement Class for purposes of the proposed settlement; appointment of Maginnis Howard as class counsel; requesting approval of a notice plan with respect to providing notice to the Settlement Class; and the scheduling of a final settlement approval hearing (the “Motion”);

IT IS ORDERED that the Motion is GRANTED, subject to certain terms and conditions:

A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY.

1. The proposed Settlement Agreement submitted with the Motion is preliminarily approved as being within the range of possible final approval.
2. Based upon the submissions of the Parties, and for purposes of this Settlement only, the Court conditionally makes the following findings:

- a. The members of the Class defined in the Settlement Agreement are so numerous as to make joinder impracticable;
 - b. There are questions of law and fact common to the Class, and such questions predominate over any questions affecting only individual Class Members;
 - c. Plaintiff's claims are typical of the claims of the Class Members;
 - d. Plaintiff and his counsel can fairly and adequately protect, and thus far have fairly and adequately protected, the interests of the Class Members in this Action; and
 - e. A class action is superior to other available methods for fairly and efficiently resolving the controversy in this Action.
3. Accordingly, pursuant to North Carolina Rule of Civil Procedure 23, the Court provisionally certifies the following Class for settlement purposes only (the "Settlement Class"):

All North Carolina residents who, during the Relevant Time Period,¹ (a) requested medical records from a North Carolina medical provider, (b) were sent an Invoice, and (c) paid amounts, or had amounts paid on their behalf to MRO in excess of those allowed under the North Carolina Medical Record Fee Act, N.C.G.S. § 90-411 ("Excess Fees").

4. Excluded from the Settlement Class are all persons who: (a) any Judge or Magistrate presiding over this action and members of their families; (b) MRO Corporation, and any entity in which it has a controlling interest and its legal representatives, assigns and successors; and (c) all persons and entities who properly execute and file a timely request for exclusion from the proposed Class.

B. CLASS COUNSEL AND CLASS REPRESENTATIVE.

5. Edward H. Maginnis and Karl S. Gwaltney of Maginnis Howard are appointed as Class Counsel.
6. Plaintiff Leland Davis is appointed as the Representative of the Settlement Class.

¹ The Relevant Time Period is the period is October 1, 2019 through March 31, 2023.

C. PRELIMINARY APPROVAL

7. The Settlement Agreement is preliminarily approved as describing a settlement within the range of what the Court would find to be fair, reasonable, and adequate.
8. The Court finds that the Settlement resulted from arms-length negotiations, extensive investigation, and discovery; and that it is sufficiently fair and reasonable to warrant Notice to the Settlement Class, and to warrant a Fairness Hearing concerning the Settlement and the terms set forth in the Settlement Agreement.
9. This preliminary approval is subject to the right of all Class Members to challenge the Settlement and show cause, if any exists, as to why a Final Order and Judgment dismissing the Action based on the Settlement should not be entered, after due and adequate notice has been provided to the Class and a Fairness Hearing has been held as ordered herein.

A. Fairness Hearing.

10. A Final Fairness Hearing shall be held before this Court on September 26, 2024 beginning at 10:00 AM or as soon thereafter as can be heard via WEBEX. The Durham County Civil Superior Court Calendar is maintained online and may be subject to change.
11. The Fairness Hearing shall determine whether:
 - a. The Settlement Class (provisionally certified herein) actually satisfies each of the prerequisites for class certification set forth in North Carolina Rule of Civil Procedure 23;
 - b. The Settlement proposed in the Settlement Agreement is fair, reasonable, and adequate;
 - c. Orders granting Final Approval of the Settlement, entering final judgment, and dismissing Plaintiff's Class Action Complaint, as provided in the Settlement Agreement, should be entered; and
 - d. The applications of Class Counsel for payment of attorneys' fees, costs, and expenses, and for Plaintiff's service award should be approved.

12. At the Fairness Hearing, the Court will consider any objections presented by the Settlement Class members and the Parties' responses to any such objections.

B. Pre-Hearing Notice to the Settlement Class.

13. The Notice shall be accomplished as set forth in the Settlement Agreement via email (where available), and first-class mail.

14. As to form and content, the Court approves (a) the proposed Long-Form Notice (Exhibit A to the Settlement Agreement), (b) the proposed Postcard Notice (Exhibit B to the Settlement Agreement), (c) the proposed Summary Email Notice (Section IV, Paragraph C(3) of the Settlement Agreement), and (c) the Settlement Internet Website (Section IV, Paragraph C(2) of the Settlement Agreement) (the "Notice Plan").

15. The Court finds that the proposed Notice Plan meets the requirements of North Carolina Rules of Civil Procedure 23, comports with due process, and is the best notice practicable under the circumstances.

16. The Notice Period will: (1) commence no later than thirty calendar days after the entry of this Preliminary Approval Order; and (2) be substantially complete no later than sixty calendar days after the entry of this Preliminary Approval Order.

C. Requests for Exclusion from the Settlement Class.

17. Any Class Member who wishes to be excluded from the proposed Settlement must send a written request for exclusion to Class Counsel, no later than, September 11, 2024.

18. Requests for exclusion must contain:

- a. The Class Member's name, address, and telephone number;
- b. The Class Member's statement of their desire to be excluded from the Class;

- c. The name (*Leland Davis v. MRO Corporation*) and docket number (22-
CVS003672-310) of this Action; and,
 - d. The Class Member's original signature.
19. A Class Member who does not send a timely written request for exclusion meeting the above-enumerated conditions shall be bound by the Final Settlement and by all subsequent proceedings, orders, and judgments in this Action, even if that Class Member has presently pending or subsequently initiated litigation or other proceedings against any Released Party relating to matters or claims released in this Action.

D. Objections to Settlement.

20. A Class Member may object to the fairness, reasonableness, or adequacy of the Settlement, as described herein.
21. However, only Class Members who do not submit a timely written request for exclusion may object—a Class Member may not seek to both exclude themselves from the Settlement Class *and* object to the proposed Settlement.
22. Any Class Member who wishes to object to any aspect of the Settlement (an “Objector”) must make a written objection that includes:
- a. The Objector's name, address, and telephone number;
 - b. Proof of the Objector's class membership;
 - c. The name (*Leland Davis v. MRO Corporation*) and docket number (22-
CVS003672-310) of this Action;
 - d. A plain statement of each objection; and,

- e. A written memorandum detailing the specific basis for each objection, including any legal or factual support, and any evidence the Objector wishes to introduce or otherwise bring to the Court's attention in support of the objection.
23. Each Objector must: (1) deliver their complete written objection to Class Counsel and Defendant's Counsel; and (2) file it with the Court no later than fifteen calendar days before the Final Approval Hearing, September 11, 2024.
24. An Objector may raise an objection either on their own or through an attorney hired at their own expense. If the objection is made through an attorney:
 - a. The written objection must also include: (1) the identity and number of all Class Members represented by the attorney(s); (2) the number of such represented Class Members who have excluded themselves from the Settlement Class; and (3) the number of such represented Class Members who have remained in the Settlement Class and have not objected; and
 - b. If the attorney intends to seek fees, costs, or expenses from anyone other than the Objectors they represent, they must also file with the Court and serve upon Class Counsel and Defense Counsel a statement including: (1) the amount of all fees, costs, or expenses sought by the attorney for the representation; (2) the factual and legal justification for all such fees, costs, or expenses; (3) an explanation of the basis for calculation of all such fees, costs, or expenses (*i.e.*, lodestar, contingency, or another method); (4) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (5) the attorney's hourly rate.

25. Any Class Member who fails to comply with this Order's provisions concerning objections shall waive and forfeit any and all rights they may have to appear separately and/or object and shall be bound by all the terms of the Settlement and by all other proceedings, orders, and judgments in this Action.

E. Effectuation of the Settlement.

26. The Court authorizes KCC, LLC to administer certain aspects of the Settlement, including:
- a. Preparing the Notice Plan and providing Notice to the Class;
 - b. Establishing the internet website;
 - c. Receiving and maintaining correspondence regarding requests for exclusion, intervention, and objections to the Settlement;
 - d. Responding to inquiries from Class Members received by email, first-class mail, or by telephone;
 - e. Determine, with the assistance of Class Counsel, the amounts of the awards due to eligible Class Members in accordance with the terms and procedures set forth herein;
 - f. Delivering reports, whether in summary or narrative form, to the Court with respect to the effectuation of the Notice Plan;
 - g. Provide other reports (with all files, documents, or data) related to the Settlement Agreement, upon request, to Class Counsel;
 - h. Agree to employ their best efforts to faithfully and fully perform all obligations and duties imposed under the Settlement Agreement, its Exhibits, and Amendments; and,
 - i. Otherwise handle other aspects of the Settlement as necessary.

F. Effect of Final Approval.

27. If the Settlement proposed by the Parties is finally approved, the Court shall enter another, separate order approving the Settlement, entering judgment, and dismissing the Class Action Complaint with prejudice.
28. Such prospective order and judgment shall be fully binding with respect to all Class Members and shall release Defendant and Released Persons (as defined in the Settlement Agreement) from any claims or causes of action based upon, arising from, or otherwise related to, directly or indirectly, the Released Class Claims.

D. SCHEDULE.

29. The following deadlines shall apply unless modified by further order of the Court:
- a. Defendant shall provide the contact information it maintains for Settlement Class Members to Class Counsel and the Claims Administrator no later than July 4, 2024.
 - b. The (a) the proposed Long-Form Notice (Exhibit A to the Settlement Agreement), (b) the proposed Postcard Notice (Exhibit B to the Settlement Agreement), (c) the proposed Summary Email Notice (Section IV, Paragraph C(3) of the Settlement Agreement), and (d) the Settlement Internet Website (Section IV, Paragraph C(2) of the Settlement Agreement) (the “Notice Plan”) shall be sent to Class Members no later than thirty seven calendar days after entry of this Order, on or before July 29, 2024.
 - c. The Notice Period shall run for at least 60 days from the date of this Preliminary Approval Order, August 26, 2024.
 - d. Any Notice to Appear at the Final Approval hearing shall be filed on or before September 5, 2024.

- e. All exclusions and objections to the Settlement shall be properly submitted, served, and filed on or before September 11, 2024.
- f. A Final Fairness Hearing shall be held before this Court on September 26, 2024, beginning at 10:00 AM or as soon thereafter as can be heard via WEBEX. The Durham County Civil Superior Court Calendar is maintained online and may be subject to change.
- g. The Parties shall file and serve papers in support of Final Approval of the Settlement, including any responses to proper and timely objections filed thereto, within a week of the Final Fairness Hearing, September 19, 2024.
- h. Class Counsel shall file with this Court their petition for an award of attorneys' fees and reimbursement of expenses and request for service awards to the Plaintiff no within a week of the Final Fairness Hearing, September 19, 2024.

IT IS SO ORDERED, this the _____ day of May, 2024.



Honorable Judge Michael O'Foghludha
Superior Court Judge Presiding

6/13/2024 3:22:41 PM